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Fair Brexit for a just Europe

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When discussing what a fair Brexit would be, one could quibble about such issues as whether the UK should pay for the full cost of the relocation of the EU agency that was meant to settle in London, or whether it should keep paying for the pensions of EU employees who were in service while it was a member, in what proportion, and for how long. But one should also have more than one eye on the bigger picture. Perhaps the quickest way of accessing this bigger picture is by having a close look at an article published in 1939 by Friedrich Hayek, one of the founding fathers of so-called neoliberalism, and by reflecting on the lessons Margaret Thatcher seems to have drawn from it, both while in power and afterwards. Against this background, it will be easier to focus on what matters most in the Brexit deal for the pursuit of social justice in Europe and beyond.

Hayek's trap

In his article, 'The Economic Conditions of Interstate Federalism', Hayek explains why he finds a multinational federation, much later exemplified by the EU, a wonderful idea. Essentially, this is because it combines two features. Firstly, there is the disabling function of the common market, i.e. the economic constraints on state-level policy that stem from the freedom of cross-border movement:

'If goods, men, and money can move freely over the interstate frontiers, it becomes clearly impossible to affect the prices of the different products through action by the individual state.

(Hayek 1939, 258)

This disempowerment of national governments would not be limited to price fixing, moreover. As Hayek goes on to say:

As has been shown by experience in existing federations, even such legislation as the restriction of child labor or of working hours becomes difficult to carry out for the individual state. ... Not only would the greater mobility between the states make it necessary to avoid all sorts of taxation which would drive capital or labor elsewhere, but there would also be considerable difficulties with many kinds of indirect taxation.

(Hayek 1939, 260)

Alongside governments, all state-level economic organisations would be seriously weakened.

Once frontiers cease to be closed and free movement is secured, all these national organizations, whether trade-unions, cartels, or professional associations, will lose their monopolistic position and thus, qua national organizations, their power to control the supply of their services or products.

(Hayek 1939, 261)

Wonderful – for Hayek! But, one might ask, won't the diminished capacity to act at the national level simply be replaced by a new capacity to act at the newly created level of the federation? By no means – and this is the second feature that, combined with the first, accounts for Hayek's enthusiasm. For there are two serious obstacles to the creation of such a capacity. Firstly, for Hayek, economic differences are likely to be far more pronounced in a large entity than in a small one:

Many forms of state interference, welcome in one stage of economic progress, are regarded in another as a great impediment. Even such legislation as the limitation of working hours or compulsory unemployment insurance, or the protection of amenities, will be viewed in a different light in poor and in rich regions and may in the former actually harm and rouse violent opposition from the kind of people who in the richer regions demand it and profit from it.

(Hayek 1939, 263)

Secondly, and more seriously, a multinational federation lacks, according to Hayek, the common identity and associated disposition to solidarity that nation states can rely on.

In the national state current ideologies make it comparatively easy to persuade the rest of the community that it is in their interest to protect ‘their’ iron industry or ‘their’ wheat production or whatever it be. ... The decisive consideration is that their sacrifice benefits compatriots whose position is familiar to them. Will the same motives operate in favor of other members of the Union? Is it likely that the French peasant will be willing to pay more for his fertilizer to help the British chemical industry? Will ... the clerk in the city of London be ready to pay more for his shoes or his bicycle to help ... Belgian workmen?

(Hayek 1939, 262–3)

There is no doubt, for Hayek, as to the answer. Admittedly, he notes that

[t]hese problems are, of course, not unfamiliar in national states as we know them. But they are made less difficult by the comparative homogeneity, the common convictions and ideals, and the whole common tradition of the people of a national state.

(Hayek 1939, 264)

In particular, decisions are less difficult to accept if the government taking them is regarded as consisting of compatriots rather than as consisting mostly of foreigners.

Although, in the national state, the submission to the will of a majority will be facilitated by the myth of nationality, it must be clear that people will be reluctant to submit to any interference in their daily affairs when the majority which directs the government is composed of people of different nationalities and different traditions. It is, after all, only common sense that the central government in a federation composed of many different people will have to be restricted in scope if it is to avoid meeting an increasing resistance on the part of the various groups which it includes.

(Hayek 1939, 264–5)

The outcome of the combination of these two features – economic constraints on state government and political constraints on union government – should be clear enough.

There seems to be little possible doubt that the scope for the regulation of economic life will be much narrower for the central government of a federation than for national states. And since, as we have seen, the power of the states which comprise the federation will be yet more limited, much of the interference with economic life to which we have become accustomed will be altogether impracticable under a federal organization.

(Hayek 1939, 265)

Consequently, the creation of such a multinational federation is an essential, and indeed wonderful, tool for the realisation of Hayek's 'liberal program', which became known, much later, as 'neoliberalism'. Bluntly put: 'the creation of an effective international order of law [in the form of a multinational federation] is a necessary complement and the logical consummation of the [neo-]liberal program' (Hayek 1939, 269).

Thatcher's plot

If there is one person who understood Hayek's message perfectly, it was Margaret Thatcher. She campaigned for her country to confirm its membership of the European Economic Community in 1975. When in office between 1979 and 1990, she strongly supported both the further unification of the common market – particularly through the 1986 Single European Act – and later its further expansion, made possible by the collapse of the Iron Curtain in 1989. In accordance with Hayek's argument, the increased mobility created by the deepening of the common market further disempowered Member States, while the increased heterogeneity created by the post-1989 enlargements further undermined the potential for the federation to take over the regulatory and redistributive powers that Member States were increasingly unable to exercise. This is Hayek's trap: Member States disabled by their immersion in the Single Market, combined with a Union disabled by its heterogeneity. This is the trap we are in more than ever thanks to the 2004 and 2007 enlargements, and to the relentless defence of the 'four freedoms' by the European Commission and the CJEU.

How should we react? As lucidly explained by Hayek, if we exclude the possibility of resurrecting thick national borders, with the concomitant economic losses and uncertainties this would trigger, there is only one real option: We must build a genuine European polity to encompass the European Single Market, instead of letting each national polity struggle with constraints imposed by its immersion in this market and, beyond, in an increasingly globalised world market. In particular, we urgently need to build socioeconomic institutions that exercise at least part of the redistributive function on a higher scale. Such redistribution will foster the pursuit of justice both directly through Union-level transfers, which are better protected than national-level transfers against social and tax competition, and indirectly by protecting national-level redistribution against such competition and the ‘race to the bottom’ it induces.

I am leaving aside here the form this EU-wide redistribution could and should take (Van Parijs 2013, Van Parijs & Vanderborght 2017, Chapter 8). What is clear, however, is that its political achievability and sustainability require a further empowerment of the Union, which should be entitled both to tax its citizens and to redistribute income across borders to a less negligible extent than it does currently. The EU does not need to mimic the American federal state, but it needs to do more of what the latter does if it does not want to let its European social model degenerate – stuck as it is in Hayek’s trap – into something far more pathetic than the American welfare state, so often the target of derision by European social democrats.

Such a move, urgently needed to get out of the trap, is of course exactly what Hayek’s disciple Margaret Thatcher would have hated to see happening. In *Statecraft*, her 2002 book, she formulates a fiery plea against those who want to erect something like the United States of Europe:

The parallel [with the United States] is both deeply flawed and deeply significant. It is flawed because the United States was based from its inception on a common language, culture and values — Europe has none of these things. It is also flawed because the United States was forged in the eighteenth century and transformed into a truly federal system in the nineteenth century through events, above all through the necessities and outcomes of war. By contrast, ‘Europe’ is the result of plans. It is, in fact, a classic utopian project, a monument to the vanity of intellectuals, a programme whose inevitable destiny is failure: only the scale of the final damage done is in doubt.
(Thatcher 2002, 359)

In the aftermath of German foreign minister (and former student activist) Joschka Fischer's famous speech on the ultimate objective of European integration (Berlin, May 2000), she did not hesitate to get personal:

It is no surprise to me that the strongest proponents of Euro-federalism today often first cut their political teeth in the infantile utopianism, tinged with revolutionary violence, of the late 1960s and the 1970s.

(Thatcher 2002, 343)

As the realisation spreads that this is precisely what we need to get out of Hayek's trap, as pressure mounts to move in this direction, Thatcher's advice to Britain would be today to get out of the grip of this monster: after 'I want my money back', it is time for 'We want our country back'. However, the 'hard Brexit' demanded by many Brexiteers would not live up to the neoliberal ambition. Rather, to remain in accordance with Hayek's script, it is crucial that Britain should retain full access – and remain fully subjected – to the European market, which the UK and Margaret Thatcher herself can pride themselves in having helped deepen and enlarge. Keeping full access to the Single Market, while escaping from any attempt to do at Union level what the Single Market prevents Member States from doing, is the wonderful combination which an appropriate 'soft Brexit' would enable 'global Britain' to achieve. In this way, Britain, having regained its 'sovereignty' can quietly undermine, through tax and social competition, any serious attempt to pursue egalitarian justice in Europe, whether at national or Union level. In other words: 'Let us Brexit, but "softly", so as to keep our sabotage capacity intact.' This is what could be called, without too much fantasy, Thatcher's plot, the conspiracy aimed at saving Hayek's neoliberal programme from the threat of the 'classical utopian project' of a political, social and fiscal union.

Fair Brexit

Hayek himself, however, unwittingly advises us not to give up on this utopian project. Ten years after he wrote the article quoted earlier, in the aftermath of World War II, Hayek was in despair about the turn of events throughout Europe and North America. With the New Deal, the expansion of social security systems, nationalisation programmes and the spreading of socialist regimes in Eastern Europe from Estonia to Albania,

‘statism’ was gaining ground all over the world. In an article published in 1949 under the title ‘The intellectuals and socialism’, he urged his fellow liberals to erect precisely what Thatcher would have dismissed as ‘a monument to the vanity of intellectuals’.

If we are to avoid such a development, we must be able to offer a new liberal program which appeals to the imagination. We must make the building of a free society once more an intellectual adventure, a deed of courage. What we lack is a liberal Utopia, ... a true liberal radicalism which does not spare the susceptibilities of the mighty (including the trade unions), which is not too severely practical and which does not confine itself to what appears today as politically possible. ... The main lesson which the true liberal must learn from the success of the socialists is that it was their courage to be Utopian which gained them the support of the intellectuals and thereby an influence on public opinion which is daily making possible what only recently seemed utterly remote.

(Hayek 1949, 194)

Thus, articulating a coherent utopian vision is not an idle pastime. It is what enables us to make possible what is currently impossible. Had Hayek not thought this to be the case, his neoliberalism would not be dominating the world a half-century later. If we do not wish to remain forever saddled with neoliberalism, or to leave the field open for nationalist and jihadist dystopias, we need to learn from what he said he himself learned from postwar socialists. What Europe needs today is bold utopian thinking, not least regarding the EU.

But if the utopian projects we need are to have any chance of being realised, they will have to be protected against the pressures of globalisation, including – throughout the tough Brexit negotiations – against aggressive tax and social competition from a potential pirate state across the Channel. There can be no serious hope for a fairer distribution of income between capital and labour, between those with skills highly valued by the market and the rest, without a sufficiently powerful supranational authority. For those of us in Europe, only the EU can give this hope any credibility. In the ultimate interest of the most vulnerable in the EU and in the UK alike, it is essential that the EU should refuse any deal that would give ‘global Britain’ the capacity to undermine any future European effort to better care for the losers of globalisation, of the Single Market and of the single currency. Access to the Single Market by outsiders must be subjected to any condition the EU may wish to impose

on its Member States, especially as regards taxation and redistribution. Escaping the grip of Thatcher's plot would be well worth even the forgoing of *all* mutual benefits from trade.

Moreover, any reflection on the terms of a fair Brexit must pay due attention to the less material, but no less important, public goods on which the EU, by virtue of its sheer existence has produced and keeps reproducing, not least the taming of Germany's supremacy and the stabilisation of democracy in Southern and Eastern Europe. Like that of other members states with a GDP per capita above the EU average, much of the UK's net contribution to the EU budget can be viewed as a contribution to these public goods. Leaving the EU will not prevent the UK from benefiting from these public goods. Nor should it exempt it from contributing to their cost. How high this contribution should be, and what form it could take – including compensatory free riding, for example, on military protection – cannot possibly be determined in an uncontroversial fashion. But allowing any country that so wishes to free ride on the continuing investment made by the remaining Member States is doomed to shatter the whole enterprise, and in doing so to undermine the very existence of the public goods it produces.

A fair deal with the UK will not prevent it from playing an important role in Europe's future. On the contrary. Along with existing countries inside or outside the EU, Britain can be part of a thriving and mutually beneficial broader European partnership. But the deal with the countries that choose to remain peripheral must not enable them to free ride on the public goods produced by the core, nor to block what the core needs to do to protect the region's most vulnerable citizens, not least those among them who voted for Brexit.